

# Summary: Proposed Local Regulation WAC 246-291 with revisions adopted as local code Group B Water System Committee 10/21/2013

## Background

### Lewis County residents receive water from one of three sources

- Group A public water systems
- Group B public water systems
- Private water sources

Currently about 5,000 people in Lewis County (seven percent of the counties' population) are provided water from 342 Group B systems.

### Group B systems typically serve:

- Small subdivisions
- Home based businesses
- Campgrounds
- Churches and Community facilities

## Water System Definitions:

**Group A** systems are defined in RCW 70.119A.020 as a public water system providing water to at least 15 service connections, 25 people per day for at least 60 days per year, or 1,000 or more people on two consecutive days.

**Group B** systems are defined in RCW 70.119A.020 as a public water system that is not a Group A system. This is further defined in WAC 246-291-020.

A **private** or "individual" water system does not meet the definition of a public water system under RCW 70.119A.020

In 2009, the Governor and the Legislature eliminated state funding for Group B oversight setting a new direction for regulating Group B systems. Recognizing the financial challenge in regulating the large number of Group B systems that were under state jurisdiction Substitute Senate Bill (SSB) 6171 changed the law and directed the State Board of Health to adopt a rule that created more stringent design standards for Group B system development but also eliminated all oversight requirements in order to help manage the department budget shortfall.

## Impact on Local Health

These changes dramatically impact Lewis County. Since 1974 Lewis County has retained primary responsibility for Group B systems utilizing the WAC 246-291 regulations. They have maintained jurisdiction through a contractual agreement with the Washington State Department of Health (DOH). Many of the proposed changes will improve system formation but some are considered to put citizens at future risk due to the elimination of on-going oversight. The rule does provide the County an avenue to continue oversight through adoption of local regulation (county code). The Group B Committee proposal would provide the county code that includes the revised state rule but incorporates adjustments that will restore some oversight requirements and allow a more flexible approach to Group B approvals. It will also ensure the continued protection of public health, which supports on-going successful development in Lewis County.

## County Code Proposal Summary

The Group B Water System Committee reviewed WAC 246-291 (Rule) that becomes effective January 1, 2014. What follows is a Summary of the major changes in the Rule and the Committee's proposed revisions that are recommended for adoption into a local county code. In addition you will find a brief discussion of the basis for the recommendations.

Change in Rule	Recommendation	Discussion
<p>246-291-005</p> <p><b>Applicability:</b></p> <p>1. Exempts one and two connection systems expanding the current WAC exemption to non-residential system application</p> <p>2. Requires new or expanding Group B systems designed to serve between 10 and 14 service connections to meet planning, engineering and design requirements of the Group A system rule</p>	<p>1a. Revise the existing two party well policy and adopt into local county code. Refine for consistency with Group B workbook (i.e. Accessory Dwelling Unit (ADU) connected to the primary home will not be required to meet the two party well policy).</p> <p>1b. Revise the exemption such that new or expanding one or two connection systems with employees (not family members) and/or public access to its water are pre-dominantly exempt. They must only meet minimum criteria and receive a County "Approval" but do not require ongoing monitoring or engineering.</p> <p>2. Adopt as written</p>	<p>1a. This section of the Rule clarifies application of the rule. The exemption is in the current Rule but it refers to only family residents. Lewis County has a policy for two party wells that is adequate but needs revisions, see Table 1.</p> <p>1b. This section of the Rule would exempt one &amp; two connection water systems, except for facilities that require health licenses, from Rule requirements. During discussions with building authorities, banks, and realtors it became clear that the ability of facilities (like businesses) on these systems to sell, obtain loans and permits, and expand was problematic without some demonstration that the water system has adequate infrastructure. It also left the building official without standards for issuance of permits. To promote growth and limit public exposure to health risks, ensuring adequate infrastructure is essential, see Table 1.</p> <p>2. This section of the WAC is not flexible. It may result in numerous 9 connection Group B systems.</p>
<p>246-291-030</p> <p><b>General Administration:</b></p> <p>Specifies that counties can adopt more stringent regulations than minimum state standards, and provides examples of the types of requirements that LHJs can adopt.</p>	<p>Minor changes in wording recommended.</p>	<p>This section recognizes that the revised Rule is more restrictive so it provides for local health to adopt regulations that are more flexible. However this flexibility requires sufficient oversight to continue to protect the public health.</p>

Change in Rule	Recommendation	Discussion
<p>246-291-050</p> <p><b>Enforcement:</b></p> <p>Clarifies enforcement procedures and intent by referencing statutory authorities</p>	<p>Expand and clarify including previous Rule language and citing local enforcement under Lewis Code Code as well as RCWs.</p>	<p>This section is broader than the previous Rule. It lacks specific language and enforcement protocols. With adoption of local code and more specificity in this section Lewis County will be able to take enforcement action sooner and levy appropriate penalties. This allows approval of “less than perfect systems” but the ability to take action in a timely manner if the system fails to meet public health standards. (An example would be we can approve a source that may be the only option for a system, which has coliform bacteria because we can allow treatment. The system would serve safe water as long as they follow the treatment operation protocols and monitor the system. The state would not allow this because they are not requiring monitoring and will not do oversight.)</p>
<p>246-291-060</p> <p><b>Waivers:</b></p> <p>1. Specifies the local health officer or local board of health has authority to grant waivers, and establishes conditions for issuing waivers.</p> <p>2. *Waivers cannot be granted for the resident population standard for new and expanding system designs (WAC 246-291-200).</p>	<p>Adopt as written</p>	<p>1. This section restricts the state from issuing waivers to the Rule but allows counties with local regulations to issue waivers. By adopting this section into code the county retains the ability to continue to issue waivers consistent with past practice.</p> <p>2. In the past the public water supply residential populations have fluctuated. This has created significant oversight problems with systems “bouncing” from Group B to A and A to B. *This section specifies that populations of new community systems will be designed and inventoried as <u>2.5</u> members per household. This section applies to new Group B systems and is not flexible.</p>

Change in Rule	Recommendation	Discussion
<p>246-291-100 / 246-291-125  <b>Groundwater source and approval:</b>            Section 246-291-100 is repealed and requirements are moved to 246-291-125</p>	<p>Adopt with minor revisions.</p>	<p>1a. The revision of the Rule in this area is improved by providing more specificity for source protection and approval. It also adds a process for review of potential groundwater under the influence (GWI) of surface water that was previously unavailable. It increases opportunities for source approval while still protecting the public health.</p> <p>1b. If approved by the PAO the revisions in the section in combination with the revised Group B Guidance (developed by DOH) may allow Group B systems up to 14 connections without a water right. The limit since 2002 has been 6. The allowance is written in the first draft of the Rule awaiting review.</p>
<p>246-291-110  <b>Surface water and groundwater under the influence of surface water (GWI) source approval and protection:</b>            This section is repealed</p>		<p>The repealing of this section is appropriate. The financial resources of Group B systems are limited and their ability to assure a safe public water supply utilizing a surface water or GWI source is very limited.</p>

Change in Rule	Recommendation	Discussion
<p>246-291-120</p> <p><b>Design Report Approval:</b></p> <p>1. Eliminates planning or design report requirements for existing systems that are not expanding</p> <p>2. Clarifies that all system designs submitted for approval must be designed by a professional engineer</p> <p>3. Counties may adopt local rules that exempt the professional engineer requirement</p>	<p>Adopt with minor revisions</p>	<p>1. This section is not a significant change for the County. For existing system approvals we have not required planning and design reports.</p> <p>2. and 3. Since the county is adopting local code to enable approval of sources that may require storage or treatment for primary Maximum Contaminant Levels (MCLs) the intent is to retain the requirement for designs from a professional engineer (PE). Also by adopting local code requiring a PE there is allowance for design options that may save the purveyor money, for example Variable Frequency Drives (a less expensive pump system that saves on electricity). Please note small facilities, like businesses, that do not require health permits and serve less than 25 people per day with 2 or less connections will not be required to utilize a PE unless the source exceeds a primary MCL and requires treatment (see Table 1)</p>

Change in Rule	Recommendation	Discussion
<p>246-291-125  <b>Groundwater Source Approval</b>  1. Requires new or expanding systems to use a groundwater source from a properly constructed drilled well and that meets the minimum supply requirements</p> <p>2. Before approval potential GWI sources for a new or expanding Group B system must be evaluated to determine whether the source is or is not GWI</p>	<p>Adopt with revisions that allow approval of sources that can be treated to meet the primary water quality standards.</p>	<p>1. To support approval of a source that does not meet primary MCLs local oversight will be necessary to bridge the public health gap created by approving a treated water supply. In addition routine monitoring and operating management will be necessary.</p> <p>2. Adopt this section of the Rule disallowing surface water or GWI due to lack of adequate finances to support treatment for small systems. The ability to develop a source that is less than perfect is important for growth in the County. Existing and new technologies are available for treatment to assure a safe water supply as long as it is well designed, monitored, and financially viable. The county has been successful in assuring safe water with treated sources but it requires a regulatory framework to manage the systems.</p>
<p>246-291-130/246-291-280  <b>Existing System Approval:</b>  Section 246-291-130 is repealed and requirements are moved to 246-291-280</p>	<p>Adopt with minor revisions</p>	<p>The revisions of this section of the Rule are primarily consistent with current Lewis County interpretation and require only a minor revision which includes establishment of a Declaration of Covenant, filed with the property title, for the Sanitary Control Area (SCA) of the well and a Notice to Future Property Owners advising users of the water system ownership.</p>

Change in Rule	Recommendation	Discussion
<p>246-291-140</p> <p><b>Water System Planning and Disclosure Requirements</b></p> <p>1. Clarifies planning requirements</p> <p>2. Requires purveyors to submit disclosure language for review and approval as a part of the system design submittal</p> <p>3. Requires purveyors to record the approved disclosure language on the property title for all properties to be served by the system.</p>	<p>Adopt with minor revisions</p>	<p>1. This section clarifies the past Rule planning requirements and is not significantly different than current county practices.</p> <p>2. and 3. The minor revision is in reference to system ownership by a Satellite Management Agency (SMA) or Utility Transportation Commission (UTC) regulated purveyor. The adjustment in local code would stipulate that the requirement to establish disclosure language on property titles would apply to non SMA owned and non UTC regulated water systems and provides a significant cost savings to developers.</p>
<p>246-291-170</p> <p><b>Water Quality Requirements for Groundwater Source Approval:</b></p> <p>1. Includes water quality requirements from several sections that apply to the design and approval of a new or expanding system</p> <p>2. Eliminates the requirement to sample for nickel and changes the standard for arsenic from 50 micrograms per liter to 10 micrograms per liter for new and expanding systems</p> <p>3. Requires purveyors to submit two coliform samples for a new or expanding system design approval</p> <p>4. Sources for new and expanding systems cannot rely on treatment to meet primary drinking water standards</p>	<p>1. and 2. Adopt as written. Sets standards already found in RCW.</p> <p>3. Revise language to clarify the process for the coliform sampling to reflect adequate testing without adding additional monetary burden to the purveyor.</p> <p>4. Revise to allow engineer designed treatment for sources that exceed primary MCLs. The standards must include monitoring and local oversight. If the county does not adopt in local code, sources that exceed primary MCLs will not be approved.</p>	<p>1. and 2. Additional sampling that has been historically required in the county for Volatile Organic Chemicals (VOCs) would be required if deemed necessary by identifiable concerns. This will reduce water system development cost.</p> <p>3. The process for taking the repetitive samples is unclear. It does not indicate a time between samples or the point in well development to sample. The addition of protocol language will give clear direction to contractors and validate sample accuracy.</p> <p>4. The ability to develop a source that is less than perfect is important to promote growth in the County. Existing and new technologies are available for adequate treatment to assure a safe water supply as long as it is well designed, monitored, and financially viable. Historically the county has been successful in assuring safe water with treated sources providing there is a sufficient regulatory framework to manage the systems.</p>

Change in Rule	Recommendation	Discussion
<p>246-291-200</p> <p><b>Design Standards:</b></p> <p>1. Sets a minimum residential population standard of 2.5 persons per household to be used in the design of new or expanding systems</p> <p>2. Establishes a minimum water supply design requirement to be used in the design of new or expanding systems</p> <p>3. Updates technical references for design standards</p>	Adopt as written	<p>1. This revision should reduce the staff time tracking systems “bouncing” between Group B to Group A and vice versa. It should also help the purveyor manage the system by stabilizing it within a set of regulatory requirements.</p> <p>2. and 3. These sections provide clear and concise direction in reference to water system design. It improves the consistency of proposals and provides clear expectations. This should save in engineering cost as it reduces ambiguity in the regulation but it should also allow more efficient staff time with improved project uniformity.</p>
<p>246-291-210</p> <p><b>Distribution System:</b></p> <p>Sets new requirements for storage reservoirs that previously had been recommended in the system design guidelines</p>	Adopt as written	This section will improve design submittals by providing clear criteria for reservoir approval.
<p>246-291-220</p> <p><b>Group B System Disinfection:</b></p> <p>Includes minor editorial changes and updates to specific American Water Works Association disinfection procedures</p>	Adopt with revisions	The revisions that are proposed for this section include language that allows the county to approve alternative disinfection procedures that may be more appropriate for particular sources in the county. Examples include adjustments for pH and treated water supplies.



Change in Rule	Recommendation	Discussion
246-291-230 <b>Treatment Design and Operations:</b> This section is repealed	Adopt this section with revisions back into code	The county is proposing revision of 246-291-170 to allow approval with treatment of sources that exceed primary MCLs. With the change this section will need to be revised and re-inserted in the local code. It will include language in reference to water quality requirements and monitoring to allow less than perfect systems to be treated to meet the MCLs.
246-291-250 <b>Continuity of Service:</b> Simplifies the process for transferring ownership by eliminating some requirements	Adopt this section with revisions adding back reference to service termination.	This section is revised to streamline ownership transfer. However, it fails to discuss the ability of a water system to terminate service in the event of a failure to pay. UTC codes are in place that supports a local code that retains this language. Therefore, the proposal is to re-introduce if found to be within allowance by the Prosecuting Attorney's Office.
246-291-260 <b>Record Keeping and Reporting:</b> This section is repealed	Adopt this section with revision back into code.	The county is proposing a revision of 246-291-170 to allow fewer restrictions on water system source approval. In addition they recognize that previously built systems lacked the extensive design and engineering requirements that will now be placed on new system development. This leaves a public health gap that can be resolved with establishing the previously required monitoring, in particular routine yearly coliform sampling and tri-annual nitrate sampling. Establishing monitoring is also consistent with the current Group B program management. The county program has resulted in a strong and effective means to track Group B water quality. Historically the program has identified significant health threats to users. In addition the local program and sampling has provided a tangible value to the system owners and users as it has provided added property value, increased marketability, and improved loan acquisition.

Change in Rule	Recommendation	Discussion
<p>246-291-280</p> <p><b>Existing Group B Systems:</b> Establishes standards for an existing system to be determined to be adequate by local permitting authorities</p>	Adopt with minor revisions	Revisions include establishing requirement to record Declaration of Covenant and Notice to Future Property Owners
<p>246-291-300</p> <p><b>General requirements:</b> Clarifies general requirements that apply to all new, existing, and expanding systems</p>	Revise to include previous language found in the original WAC and add revised language as needed.	This section removes language for routine monitoring requirements. Revisions are needed to add language into the local code for routine monitoring allowing more flexible source approval.
<p>246-291-310</p> <p><b>General Follow-up:</b> This section is repealed consistent with eliminating routine water quality sampling found in 246-291-320 and 246-291-330</p>	Revise to include previous language found in the original WAC and add revised language as needed.	The repeal of this section removes language in reference to routine monitoring requirements. Revisions are needed to add the appropriate language into the local code for routine monitoring allowing more flexible source approval.
<p>246-291-320</p> <p><b>Bacteriological:</b> This section is repealed consistent with eliminating routine water quality sampling found in 246-291-320 and 246-291-330</p> <p>1. Eliminates annual coliform monitoring requirement</p> <p>2. Requirements that apply to new or expanding system approval have been included in Section 170</p>	Revise to include previous language found in the original WAC and add revised language as needed in section 320 or 170.	<p>1. The repeal of this section removes language in reference to routine monitoring requirements. Revisions are needed to add the appropriate language into the local code for routine monitoring allowing more flexible source approval.</p> <p>2. Section 170 is proposed to be adopted as noted above.</p>

Change in Rule	Recommendation	Discussion
<p>246-291-330 <b>Inorganic, Chemical, and Physical:</b> This section is repealed consistent with eliminating routine water quality sampling found in 246-291-320 and 246-291-330</p> <p>1. Eliminates once every three years nitrate monitoring requirement</p> <p>2. Requirements that apply to new or expanding system approval have been incorporated into Section 170</p>	<p>Revise to include previous language found in the original WAC and add revised language as needed in Section 330 or 170.</p>	<p>1. The repeal of this section removes language in reference to routine monitoring requirements. Revisions are needed to add the appropriate language into the local code for routine monitoring allowing more flexible source approval. In addition, historical routine nitrate monitoring in the county has identified areas in which nitrate is increasing, in some cases above the MCL. It would be a poor public health decision to reduce nitrate monitoring with evidence of increasing nitrate levels.</p> <p>2. Section 170 is proposed to be adopted as noted above.</p>
<p>246-291-340 <b>Turbidity:</b> This section has been repealed consistent with surface water and groundwater under the influence of surface water (GWI) sources are no longer approvable for new or expanding systems</p>	<p>Appropriate to repeal</p>	<p>This section of Rule was written expressly to address surface water systems. The resources available to a Group B water supply to treat a surface water source or GWI source are minimal and removing it from the sources that may be approved is appropriate. However it should be noted that the Rule does contain relief for potential GWI in new Section 125</p>

Change in Rule	Recommendation	Discussion
<p>246-291-360</p> <p><b>Public Notification</b></p> <p>1. Requires purveyors to notify consumers served by the system within 24 hours if a sample contains E. coli or has a nitrate level greater than 10 milligrams per liter</p> <p>2. Requires purveyors to notify consumers served by the system within 30 days if the system has an arsenic level greater than 10 micrograms per liter</p> <p>3. Updates required notification language</p>	<p>Adopt with revisions that include more timely notifications due to approval of sources that require adequate treatment in Section 360.</p>	<p>1a. This section recognizes the need for immediate notification to the consumers in the event of an E. coli positive sample. However since the rule does not require routine sampling the identification of E. coli in a water supply could be delayed until a user illness. The proposal is that this section of the code be adopted with revisions that clearly identify the purveyor's responsibilities and notification timelines including the ability to institute a precautionary boil water advisory.</p> <p>1b. This section of the Rule delays the purveyor's response to a positive coliform, negative E. coli present, to 30 days. Considering the county is pursuing less restrictive source standards and higher source risk the notification time is proposed to be reduced in the local code.</p> <p>2. The county does have existing systems with Arsenic above 10 micrograms per liter. The intent of the code is not to penalize those systems but they will need to notify the users and this section accomplishes that requirement.</p> <p>3. The language notification updates are necessary and will be revised in the code to include local contacts and requirements.</p>